

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN WINTERS, JR.,)	
Plaintiff,)	
)	C.A. No. 21-22 Erie
)	
v.)	District Judge Susan Paradise Baxter
)	Magistrate Judge Richard A. Lanzillo
ORTHOPEDIC SPORT MEDICINE,)	
et al.,)	
Defendants.)	

MEMORANDUM ORDER

This action was commenced by Plaintiff's filing of a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983 against Defendants Orthopedic Sport Medicine, Supervisor Mrs. Chailene, and Physical Therapist Andrew Hay, alleging medical negligence for injuries he suffered during physical therapy treatment. This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On April 28, 2021, Defendants filed a motion to dismiss the complaint for failure to state a claim upon which relief may be granted and/or lack of subject matter jurisdiction [ECF No. 14]. After Plaintiff failed to file a response to their pending motion to dismiss, Defendants filed a supplemental motion to dismiss for Plaintiffs failure to prosecute [ECF No. 17].

On July 1, 2021, Magistrate Judge Lanzillo issued a report and recommendation ("R&R") recommending that Defendants' motion to dismiss [ECF No. 14] be granted and this case be dismissed pursuant to Rule 12(b)(1) and, alternatively, Rule 12(b)(6), without prejudice to Plaintiff's right to re-file an action in state court to pursue his medical negligence claims [ECF

No. 18]. Objections to the R&R were due to be filed by July 19, 2021; however, Plaintiff has failed to file any objections to date.


After de novo review of the complaint and documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 3rd day of August, 2021;

IT IS HEREBY ORDERED that Defendants' motion to dismiss complaint [ECF No. 14] is GRANTED and Plaintiff's complaint is DISMISSED, without prejudice to Plaintiff's right to re-file his action in state court, if he so desires. The report and recommendation of Magistrate Judge Lanzillo, issued July 1, 2021 [ECF No. 18], is adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' supplemental motion to dismiss [ECF No 17] is hereby DISMISSED as moot.

The Clerk is directed to mark this case CLOSED.


SUSAN PARADISE BAXTER
United States District Judge

cc: Richard A. Lanzillo
U.S. Magistrate Judge

all parties of record